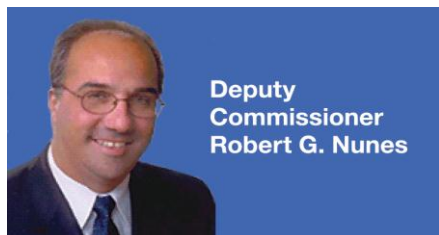


A Publication of
the Massachusetts
Department of Revenue's
Division of Local Services

City & Town

Amy Pitter, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



Local Officials Directory

Municipal Calendar

IGR's & Bulletins

Workshops, Seminars & Events

What's New

DOR 360



City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

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In this Issue:

- [DLS Announces Spring Course 101 Registration Now Available](#)
- [Taxing Questions: A Look at Tax Agreements](#)
- [Patrick-Murray Administration Announces \\$2.25M in CIC Grant Funding for Municipalities](#)
- [Statewide Contract HSP34, Laboratory Supplies and Minor Equipment: New K-12 Category!](#)
- [MassGIS Municipal Workshop](#)

DLS Announces Spring Course 101 Registration Now Available

Seminars, Workshops and Trainings

The Division of Local Services is pleased to announce that the basic course for assessors, "Assessment Administration: Law, Procedures and Valuation" (also known as Course 101) will be held in Boston this spring.

Advanced registration is required as space is limited. Questions and requests for further information can be sent to dlsregistration@dor.state.ma.us.

The registration form can be found at:
<http://www.mass.gov/dor/local-officials/training-and-seminars/course101/>

Taxing Questions: A Look at Tax Agreements

James Crowley, Esq., Bureau of Municipal Finance Law

From time to time, we are asked about the power of

communities to enter into tax agreements with taxpayers. More specifically, we have been asked about the enforceability of agreements between taxpayers and assessors that provide for stable and guaranteed tax assessments over a period of years.

As you may know, cities and towns do not have the power to tax under the Home Rule Amendment. Mass. Const. Amend. 89 Sect. 7. The power to tax is reserved to the Legislature. Municipalities may only impose those taxes authorized by the Legislature, and must tax in the manner expressly provided by state statute. As a general rule, if real or personal property is subject to tax, then the board of assessors must assess the tax based on the fair cash value of the property as of the January 1st assessment date as provided in M.G.L. Ch. 59 Sect. 38. Fair cash value has been defined by the Supreme Judicial Court to mean "the price an owner willing but not under compulsion to sell ought to receive from one willing but not under compulsion to buy. It means the highest price that a normal purchaser not under peculiar compulsion will pay at the time. The fair cash value is the value the property would have had on January 1 of any taxable year in the hands of any owner, including the present owner." Boston Gas v. Assessors of Boston, 334 Mass. 549, 566 (1956). The Supreme Judicial Court has held that the fair cash value standard cannot be varied by public officers or, by an agreement, between the municipality and the taxpayer. (Town of Saugus v. Refuse Energy Systems Company, 388 Mass. 822 (1983))

In the Saugus case, the Court did not permit the town to enter into an agreement as to the future tax liabilities of a waste to energy power plant or vary from the fair cash value standard. Therefore, the general rule is that any agreement to guarantee the amount of taxes over a period of time regardless of the parcel's fair cash value is illegal and unenforceable. In the aftermath of the Saugus decision, however, the Legislature amended M.G.L. Ch. 16 Sect. 24A to permit a one dollar per ton tax on solid waste processed at a private resource recovery facility.

There are certain exceptions to the full and fair cash value general rule. A city or town may enter into a tax agreement with a taxpayer if expressly authorized by some general or special law. For example, M.G.L. Ch. 59 Sect. 38H(b) which was added by the 1997 Electric Deregulation Act (Ch. 164 of the Acts of 1997) specifically provides for a payment in lieu of tax agreement (PILOT) between a generation company or wholesale generation company and a municipality, but does not authorize any particular board or officer to act on behalf of the municipality. For this reason, we have advised local officials in Informational Guideline Release [1998-403](#) that an agreement negotiated by certain authorized officials must be approved or ratified by the municipality's legislative body which in towns would be town meeting, and in cities, the city council and mayor.

PILOT agreements are also authorized by the Legislature for urban redevelopment corporations which make negotiated agreements with the municipality. M.G.L. Ch. 121A exempts urban redevelopment corporations from real and personal property taxes and special assessments but imposes a Ch. 121A excise which is less onerous than taxation under M.G.L. Ch. 59. The rationale for M.G.L. Ch. 121A is to permit development of residential, commercial and industrial projects in areas with high tax rates or with less desirable locations. The developer would pay a reduced amount that could be easily calculated over the life of the agreement (ranging from 15 to 40 years). On its part, the community would receive some revenue on property which would not otherwise be developed but for the tax break to the developer. Another economic development tax agreement authorized by state law is a tax increment financing (TIF) agreement. TIF agreements can last for up to 20 years and can exempt all or a portion of increased value due to the construction. (M.G.L. Ch. 40 Sect. 59; M.G.L. Ch. 59 Sect. 5 Cl. 51.)

The validity of tax agreements has also been raised in conjunction with Appellate Tax Board (ATB) cases which have been settled, and the "settlements" are

structured to include property tax assessments for future years. In our view, these purported agreements between taxpayers and boards of assessors as to future tax obligations are void and contrary to public policy. The role of the ATB in any case before it is to deny or grant an abatement for the year(s) in question. If a settlement is reached between the parties, the ATB will dismiss the case or, more likely, the petitioner (appellant) will withdraw the case. If the assessors subsequently were to breach the settlement agreement with the taxpayer, the ATB would revive the case (and not enforce the settlement agreement) and abate or refuse to abate the assessed value for the tax year which is the subject of the ATB appeal.

The ATB only has those powers expressly or by implication conferred by statute. The ATB in any abatement case has certain authority which includes: ordering discovery through interrogatories or depositions, allowing a property inspection, or admitting or excluding evidence. We are not aware of any statute that gives the ATB authority to give the force of law to any "settlement" of taxes for future years. The purported settlement would not be binding on the ATB, the assessors or the taxpayer. There is a limited exception to this rule which is set forth in M.G.L. Ch. 58A Sect. 12A. In any ATB proceeding, the taxpayer has the burden of proof by demonstrating over-assessment unless the ATB made a finding of fair cash value within the two immediately preceding fiscal years. In that event, the burden of proof would shift to the assessors to prove affirmatively the increase in value over the ATB's previously determined value was warranted. Consequently, unless there is some express statutory authority, agreements between municipalities, acting through their assessors or otherwise, with taxpayers as to future assessments has no legal force or effect.

Patrick-Murray Administration Announces \$2.25M in CIC Grant Funding for Municipalities

Executive Office for Administration and Finance

Last week, Lieutenant Governor Timothy Murray and Secretary of Administration and Finance Glen Shor announced the 27 recipients of the \$2.25 million Community Innovation Challenge (CIC) grant program to incentivize and support innovative regionalization and other cost saving initiatives. These programs will change the way local governments do business to maintain service delivery and stretch every tax payer dollar as far as possible.

The 27 recipients of the FY 2013 CIC grant program span 162 cities and towns. The project recipients reflect geographic and income diversity across the Commonwealth, including several Gateway Cities.

"The first round of the Community Innovation Challenge Grant program was a success, attracting wide interest by municipalities and planning agencies to develop regionalization and innovation strategies on the local level," said Lieutenant Governor Murray. "We're excited to continue this program with the second round of award recipients who have all proposed more innovative opportunities and cost-saving measures to collaborate, regionalize and maintain valuable local services."

"Our new fiscal reality demands that government change the way it does business to stretch every taxpayer dollar as far as possible," said Secretary Shor. "The Patrick-Murray Administration's CIC grant program is just one of the many ways we are working to give cities and towns the tools they need to drive change in local government. I am excited that the second round of this program will provide for the continuation and expansion of some really great programs and jump-start brand new ones."

Regionalization is an opportunity for neighboring communities to build partnerships to engage in shared services, inter-municipal agreements, municipal collaborations, consolidations, mutual aid and regional planning to reduce the risk of duplicating efforts and unnecessary spending of limited taxpayer dollars. With 351 cities and towns spanning the Commonwealth, there are countless ways to

collaborate and work together to maintain important local services and deliver those services effectively and efficiently.

The CIC grant program is one more example of the kind of reforms the Patrick-Murray Administration has made in challenging fiscal times to make government more effective and efficient. CICG provides incentives, such as technical assistance, training and other one-time or transition funding for municipal leaders to work together to pursue innovative ways to deliver critical services to taxpayers more efficiently. Ideal projects for the grant program include those with the potential for greatest impact, high levels of innovation and substantial potential cost savings for municipalities.

"I commend the Patrick-Murray Administration for their continued support in securing funds for the Community Innovation Challenge Grant Program," said House Speaker Robert A. DeLeo. "As the cities and towns across the Commonwealth begin to emerge from this economic downturn, it remains important that state leaders continue to find ways to make government more effective and efficient."

In the FY 2012 budget, Governor Patrick authorized the development of a competitive grant program to encourage and incentivize regionalization based upon the belief that the most crucial and visible interactions between government and citizen occur locally. A grant program was proposed in the Governor's budget, and supported by the Legislature, providing \$4 million for regionalization and other initiatives that will improve the effectiveness and efficiency in the delivery of local services. In FY 2012, the Patrick-Murray Administration invested in 27 projects across the Commonwealth. These projects involved 138 cities and towns and are currently being finished. The results and outcomes of each project will be shared with the general public this summer on the ANF website.

For a full list of recipients, please click [here](#).

Statewide Contract HSP34, Laboratory Supplies and Minor Equipment: New K-12 Category!

Operational Services Division

Are you looking to replenish your laboratory supplies or equipment for your classroom or healthcare facility this spring or the upcoming school year? If so, take advantage of the Operational Services Division's Laboratory Supplies and Minor Equipment Contract (HSP34) to help save your organization time and money.

The contract has nine different categories with Category 9: Scientific Educational designed for K-12 schools being new! Other categories include: 1. Chemicals; 2. Clinical Products; 3. Clinical Diagnostics; 4. Equipment; 5. Forensic & Environmental; 6. Furnishings; 7. Microbiology; 8. Safety Products.

Benefits include: free delivery within seven days on orders of \$50 or more, competitive price lists and more. This contract can be used for all purchases under \$50,000. For more information, refer to the Contract User Guide on the OSD website at: [HSP34: Contract User Guide](#).

MassGIS Municipal Workshops

Seminars, Workshops and Trainings

MassGIS and State 911 will be hosting workshops regarding addressing and GIS. MassGIS, a program in the Information Technology Division of Administration and Finance, provides technical resources and GIS data for local and state government and for the general public. This workshop will review both state and local efforts; at the state level point address files and other GIS data are being compiled to meet the needs of new 911 systems, which use more accurate address locations to route calls and to support local dispatch.

Lowell - Rogers School Admin Bldg
[43 Highland Street Room 054](#)

[Lowell, MA 01852](#)

February 26, 2013

10AM-Noon

(Snow date February 28, 2013)

Auburn Town Hall

[104 Central Street](#)

[Auburn MA 01501](#)

March 4, 2013

10AM-Noon

(Snow date March 7, 2013)

RSVP to following:

911 Addressing Coordinator Michael Warner

notify911address@state.ma.us

617-626-4617

General MassGIS Outreach Paul Nutting

notify911address@state.ma.us

617-619-5611

February Municipal Calendar

| | | |
|----|-------------------|--|
| 1 | Taxpayer | Deadline for Payment of 3rd Quarterly Tax Bill Without Interest According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the 3rd Quarter actual tax payment without interest, unless the actual tax bills were mailed after December 31. If mailed after December 31, the actual tax is due as a single installment on May 1, or 30 days after the bills were mailed, whichever is later. |
| 1 | Taxpayer | Quarterly Tax Bills - Application Deadline for Property Tax Abatement According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on Feb. 1 unless actual tax bills were mailed after December 31. In that case they are due May 1, or 30 days after mailing, whichever is later. |
| 28 | Finance Committee | Continue Budget Review and Develop Recommendations This date will vary depending on dates of town meeting. |